



The gripes of froth . . . alcopop taxes are still the subject of dispute.

Photo: GLENN HUNT

# Alcopop tax appeal likely

**Marsha Jacobs**

An appeal is expected to be lodged to stop the Australian Taxation Office collecting the alcopop excise without legislation backing it.

Hours before the federal government announced the re-introduction to the Senate of the alcopop tax bill on Wednesday, the Federal Court ruled against a challenge to stop collection of higher tax rates.

Liquor supplier Suntory was seeking an injunction to stop the Tax Office collecting the tax on the basis the bill hadn't passed the Senate and that the liquor industry would be receiving a refund on the tax anyway.

Under excise law, the government is allowed to introduce a proposal, such as the alcopop tax, and collect on it for up to 12 months without legislation to back the collection. There is also a provision preventing legal challenges to any proposals for 12 months, something Suntory's lawyers unsuccessfully tried to argue against.

It is understood Suntory will file an urgent appeal against the judgement by next week.

Because of the defeat of the bill in the Senate in March, there was confusion among consumers, retailers and suppliers about whether the tax should still be collected and whether the government should be collecting the tax despite the failure to have the legislation passed.

On Wednesday, Justice Jayne Jagot stayed the hearing on whether the alcopop tax should be paid until May 13, when the

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Michael Dirks, senior counsel

12-month period would be up, effectively throwing out the challenge, which will be far less significant once the May 13 deadline has passed because taxes will have been paid to that date.

The legal challenge, if successful, would only have stopped payments for the next month but would have clarified the confusion, according to Hunt & Hunt partner Andrew Hudson.

"A lot of retailers and consumers were confused and this was clearly a measure to try to bring things to a head," he said. "While there is a lot of sympathy for the argument that paying revenue without supporting legislation in place doesn't feel right, the court supported the proposition that the government can collect for 12 months without legislation."

When the bill was defeated in the Senate, the government acknowledged it would have to repay the liquor industry \$290 million collected since April, when it first raised the excise on ready-to-drink beverages by 70 per cent.

Taxation Institute of Australia senior counsel Michael Dirks said the case "answered the question everyone was asking about how the government can keep raising money when they are just going to give it back".

He said the public was confused about how this could happen. "This decision reconfirms the power of the government under the Excise Act to make declarations and collect without a legislative basis on which to do so," he said.



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